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THE FUNDAMENTALS OF DEBT FINANCING

Initial and Continuing Disclosure

by

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What is the Law?

The Basic Laws Requiring Disclosure

- Common Law of Deceit or Fraud or Breach of Fiduciary Obligation
- Federal Securities Laws
 - Securities Act of 1933, Section 17(a)
 - Securities Exchange Act of 1934, Section 10(b)
 - SEC Rule 10b-5
 - SEC Rule 15c2-12

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How do I Comply With the Law?

Procedures to Satisfy Disclosure Laws

- Disclosure Documentation
 - Official Statement —“marketing document” or “insurance policy”?
 - Other Documentation
 - Disclosure over the Internet
 - Shifting the burden—private placements with investor’s letters

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- Due Diligence Review
 - Document Review Sessions
 - Due Diligence Meeting
 - Due Diligence visit to borrower by counsel

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- SEC Reports Evaluating Disclosure
 - Orange County (1996)
 - Questions for Public Officials
- SEC Regulations Suggesting Disclosure
 - “Fair Disclosure” Regulation (2000)

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- Continuing Disclosure
 - Undertaking —Continuing Disclosure Agreement
 - Implementation of Undertaking
 - Annual Reports
 - Material Events Disclosures
 - “Central Post Office” filings
 - <http://www.disclosureusa.org>

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What May Happen if I Don't Comply With the Law?

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Enforcement of Disclosure Laws

- SEC Actions
 - Investigations
 - Injunctive Actions in Federal Court
 - Administrative Proceedings
 - Criminal Referrals to Justice Department

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- Private Enforcement Actions
 - securities class action litigation
 - private attorneys general
 - “whistleblower” actions
- State Attorney General’s Actions
- Local Government Enforcement Actions

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• QUESTIONS AND ANSWERS